

EDWARD C. KITTLE.

FEBRUARY 24, 1910.—Ordered to be printed.

Mr. WARREN, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany H. R. 970.]

The Committee on Military Affairs, to which was referred the bill (H. R. 970) for the relief of Edward C. Kittle, reports the same to the Senate favorably, without amendment, and recommends that it be passed.

This bill, if enacted into law, will give to the beneficiary a pensionable status only.

This officer seems to have had faithful service from September 1, 1861, to August, 1863, when he was arraigned before a general court-martial, convicted of a breach of arrest, and dismissed from the service. The Judge-Advocate-General, in reviewing the case, stated:

Under all the circumstances of the case, it is concluded that the disability imposed by the sentence of this officer should, as an act of justice, be ordered to be removed by the President.

(See letter of the Judge-Advocate-General to President Lincoln, quoted in official report of the War Department upon this case, printed as a part of this report.)

The report of the Judge-Advocate-General was indorsed by the President as follows:

The disability is hereby removed, as above recommended.

A. LINCOLN.

OCTOBER 13, 1863.

Under authority of the President's indorsement, a letter was addressed to the governor of the State of New York, as follows:

WAR DEPT., A. G. OFFICE,
Oct. 27, 1863.

SIR: I am directed to notify you that Mr. Edward C. Kittle, late captain of the 61 N. Y. Vols., is relieved from the disability incurred by his dismissal from the service, so far as to authorize his reentry into the service, if duly recommissioned.

I am, sir, very respectfully, your obedient servt.,

THOMAS M. VINCENT,
A. A. General.

His Excellency the GOVERNOR OF NEW YORK,
Albany, N. Y.

The pending bill proposes to make the Government's declaration that Captain Kittle would be received again into its service, in case the governor of his State should see fit to recommission him, equivalent to an honorable discharge from the service, in so far as the pension laws are concerned.

The report from the records of the War Department upon this case is as follows:

CASE OF EDWARD C. KITTLE, LATE CAPTAIN COMPANY D, SIXTY-FIRST NEW YORK VOLUNTEERS.

The records show that Edward C. Kittle was commissioned a captain in the Sixty-fifth New York Infantry Volunteers, and he has been recognized by this department as of that grade from September 1, 1861. He was honorably discharged the service, on tender of resignation, in orders from headquarters, Fourth Army Corps, dated May 2, 1862.

The records also show that Edward C. Kittle was commissioned a captain in the Sixty-first New York Infantry Volunteers, and he has been recognized by this department as captain of Company D of that regiment from June 7, 1862. In August, 1863, he was arraigned before a general court-martial on charges and specifications as follows:

"Charge I: Misbehavior in the face of the enemy.

"Specification 7: In this, that Capt. E. C. Kittle, Company D, Sixty-first New York Volunteers, being then in command of Company D, Sixty-first New York, under the pretense of being sick, took advantage to secure his own personal safety and left his regiment in the face of the enemy and went to the rear; this at Chancellorsville, Va., on the 2d and 3d days of May, 1863.

"Specification 2: In this, that he the said Capt. E. C. Kittle, Company D, Sixty-first New York Volunteers, under the pretense of being sick and without authority, left the front in the face of the enemy and went to the rear, about 21 miles, to Potomac Creek, to the general hospital of the First Division, Second Army Corps. All this at Chancellorsville, Va., on or about the 4th or 5th day of May, 1863.

"Charge II: Breach of arrest.

"Specification 1: In this, that the said Capt. E. C. Kittle, Company D, Sixty-first New York Volunteers, while being under charges for misconduct before the enemy and in arrest, confined to the limits of his regiment and its camp, and under orders to follow his regiment on the march, did break his arrest by leaving his regiment without permission or authority, while the latter was halted at Poolesville, Md., and went into the said town and procured whisky and other articles for his own use. All this at Poolesville, Md., on the 27th day of June, 1863.

"Specification 2: In this, that the said Capt. E. C. Kittle, Company D, Sixty-first Regiment New York Volunteers, while being under charges for misbehavior before the enemy and in arrest, confined to his regimental camp and under orders to follow his regiment on the march, did break his arrest by leaving his regiment without permission or authority and ran off to the rear when his regiment was marching forward to engage the enemy; this at Gettysburg, Pa., on the 2d day of July, 1863.

"Specification 3: In this, that the said Capt. E. C. Kittle, Company D, Sixty-first New York Volunteers, while being under charges for misbehavior before the enemy and in arrest, confined to the limits of his regimental camp, did break his arrest by leaving his camp and regiment without permission or authority and went off mounted on horseback; all this at the camp near Morrisville, Va., on the 1st day of August, 1863, after 8 o'clock p. m."

In his plea to the first charge and its specification, Captain Kittle denied the jurisdiction of the court and his plea was sustained. He was found guilty of the second charge and its specifications, with the exception of the words "ran off to the rear," and was sentenced to be "cashiered the service of the United States." The sentence was approved by competent authority and was promulgated in orders from headquarters, Army of the Potomac, August 24, 1863.

On September 29, 1863, Captain Kittle applied to the President for a review of his case, submitting letters from Gen. W. S. Hancock and Cols. Nelson A. Miles and John R. Brooke, testifying to his soldiery qualities in general, and in particular as to his good conduct in the battles of Fredericksburg and Chancellorsville. In explanation of his plea to the first charge and its specifications, he stated that he had previously been tried by court-martial for the same alleged offense and had been acquitted by a vote of the members of the court, but that, as the army was under marching

orders, the finding was not promulgated. He then proceeded at considerable length in defense against the charge and specifications of which he was adjudged guilty. His statement need not be quoted here, as its substance is sufficiently set forth in a report by the Judge-Advocate-General of the army, of which the following is a copy

"JUDGE-ADVOCATE-GENERAL'S OFFICE,
"Washington, October 10, 1863.

"To His Excellency A. LINCOLN,
"President of the United States:

"In the case of Capt. Edward C. Kittle, Sixty-first New York Volunteers, referred to me for examination and report, under your indorsement of yesterday, I have the honor to submit as follows:

"This officer was sentenced to be cashiered by a general court-martial convened in First Division, Second Corps, in August last, for the offense of 'breach of arrest,' alleged to have been committed on three separate occasions. A careful examination of the testimony in the record of the trial, and of the papers now filed in the case, leads to the conclusion that the sentence of Captain Kittle was unnecessarily severe.

"He had been in arrest since May 17 last, when on June 27 following the first case of breach of arrest is alleged to have occurred. He had been confined by his order of arrest to the limits of his regiment. The regiment on this day was on the march and had halted in the outskirts of the village of Poolesville, about 100 to 150 yards from the main street. While so halted, the captain left the line of the regiment and was absent from ten to fifteen minutes, returning before the regiment recommenced to march. It is alleged in the specification that he went into the village and procured whisky and other articles for his own use. The proof, however, is that he went into or toward the village and was seen eating a pie when he returned. Yet the court found him guilty of the specification as it stands, although of the allegation alluded to no proof whatever is offered.

"In his statement Captain Kittle says that when he left his regiment it was to go to an outhouse near by, he being quite unwell with diarrhea; and this assertion is supported by the surgeon of the regiment who testifies that on the same day he gave the captain a pass to ride in the regimental wagons, as he was sick and unable to march.

"The second alleged breach of arrest occurred on 2d July, at the battle of Gettysburg. It is testified that when the regiment moved on this day, it moved forward one-fourth of a mile before it came upon the enemy; that the captain did not move forward with the regiment, was not with it during the fight, nor when it fell back, nor until 11 o'clock on the same night; that in the meantime the regiment had been marched back 2 miles as a guard to prisoners. The surgeon of the regiment testified that when the regiment went forward to engage the enemy, the captain remained behind with him, and was with him for about three hours. The surgeon, however, could not have been far in the rear, for he testifies that they were under fire all the time; and he adds that after the three hours mentioned the fire became so much hotter that several of the surgeons fell farther back, and Captain Kittle with them.

"It does not appear that the captain made an effort to be released from arrest so as to take part in the engagement at Gettysburg; but it does appear that he made an application for a similar purpose (but without success) to the division commander on a prior occasion when an action was expected, to wit, on June 14. It also appears that on a subsequent occasion, to wit, on July 12, when an engagement was anticipated at Williamsport, he made a similar but unsuccessful application to the brigade commander.

"An intelligent witness, Colonel Brooke, commanding a brigade in the same division, testified that it was a custom of the service, and his own practice, to release an officer who was under arrest when an engagement was impending, in order to give him an opportunity to redeem himself by bravery and good conduct before the enemy. He also testified that an officer in arrest should not be obliged to be exposed to a heavy fire.

"Under this view Captain Kittle could hardly be fairly held guilty of a breach of arrest on this occasion. Not being relieved from arrest, he would have gone into action unarmed, without a command, and almost defenseless. He could have been of no service whatever, and would rather have impeded than assisted his comrades. It can not be just that an officer should be placed in such a position and left liable meanwhile to lose his life or become disabled from wounds. The views of Colonel Brooke, therefore, in this regard are concurred in as reasonable and proper.

"The third 'breach of arrest,' of which this officer was found guilty, was on August 1, when the regiment, being on the march, had temporarily encamped. The lieutenant-colonel of the regiment (Captain Kittle's prosecutor) testifies that he saw

the captain leave the limits of the camp at night on horseback, but that he did not know how long he was absent. An officer of the regiment, however, who seems to be an impartial witness, testifies that he does not think that the captain exceeded the limits of the regiment in his ride; that he saw him go and return and does not think his absence was longer than ten minutes; that he was in the view of the witness all the time except for about three minutes, during which the latter had stepped into his tent. It is fully shown that the camps of three regiments were in this bivouac so thrown together that it was very difficult to distinguish one regiment from another, or to ascertain the limits of any one particular regiment. There seems to have been no regular line for the tents of either regiment; and it is testified that the direct course from the officers' tents of the Sixty-first Regiment to the quarters of their colonel was through the camp of the One hundred and forty-eight Pennsylvania Regiment of the same brigade.

"Were these several cases of alleged breach of arrest considered as technically proved, it is evident that they should not be viewed as serious offenses. But it is doubtful whether any of them can be regarded as fully sustained by the testimony. Colonel Brooke testifies that he should not consider it for the good of the service for a commanding officer to notice an absence of ten minutes on the part of an inferior officer in arrest, and his view is doubtless one which should be adopted where the absence is unaccompanied with circumstances of aggravation. At least it is quite evident from an examination of a considerable number of records in cases similar to the present that the charge of breach of arrest is often recklessly made upon the basis of some slight and unimportant absence on the part of an officer from regimental or brigade lines, and it is believed, as the offense is made a most serious one by the Articles of War, that it should not generally be charged except upon some determined and decided violation of the order of arrest, in the nature of a deliberate contempt of the authority ordering it.

"The testimonials now filed by Captain Kittle are of a favorable and satisfactory character. Colonels Miles and Brooke, commanding brigades in the division to which his regiment is attached, speak most highly of his bravery and good conduct at Fredericksburg and Chancellorsville, and of his general efficiency as an officer, and Major-General Hancock and Brigadier-General Caldwell concur in their opinion. It is stated that Captain Kittle's conduct at Fredericksburg was mentioned favorably in the official reports, and that during the latter part of this engagement and for some time afterwards he remained in command of his company. He served with his regiment during the peninsular campaign and has always been regarded as a steady and reliable officer. His prosecution by Lieutenant-Colonel Brodie is explained by Colonel Miles as growing out of a personal feeling existing between the lieutenant-colonel and the captain.

"Under all the circumstances of the case, it is concluded that the disability imposed by the sentence of this officer should, as an act of justice, be ordered to be removed by the President.

"J. HOLT,
"Judge-Advocate-General."

The report of the Judge-Advocate-General was indorsed by the President as follows:

"The disability is hereby removed as above recommended.

"A. LINCOLN.

"OCTOBER 13, 1863."

Under authority of the President's indorsement a letter was addressed to the governor of the State of New York as follows:

"WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
"October 27, 1863.

"SIR: I am directed to notify you that Mr. Edward C. Kittle, late captain of the Sixty-first New York Volunteers, is relieved from the disability incurred by his dismissal from the service so far as to authorize his reentry into the service if duly recommissioned.

"I am, sir, very respectfully, your obedient servant,

"THOMAS M. VINCENT,
"Assistant Adjutant-General.

"His Excellency the GOVERNOR OF NEW YORK,
"Albany, N. Y."

The remedial action taken by the War Department in this case did not change the status of Captain Kittle as that of a dismissed officer of the Sixty-first New York Infantry Volunteers, but was merely a declaration that the Government would not object to receive him again into its service should the governor of his State see fit to recommission him. It does not appear from the records of this office that he was recommissioned.

Respectfully submitted.

F. C. AINSWORTH, *The Adjutant-General.*

WAR DEPARTMENT,
The ADJUTANT-GENERAL'S OFFICE,
February 3, 1910
The SECRETARY OF WAR.

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